



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 12, 1998

Mr. Scott Kelly
Deputy General Counsel
The Texas A & M University System
John B. Connally Building
301 Tarrow, 6th Floor
College Station, Texas 77843-1230

OR98-2684

Dear Mr. Kelly:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 119422.

Texas A&M University (the "university") received a request for the following information:

1. All travel (motor pool) records pertaining to trips made by Dr. Ray Bowen (President) or any TAMU staff to South Texas School of Law.
2. All long distance telephone records of calls made to South Texas School of Law. We would like the names of the TAMU official who made these calls.
3. Salary of Dr. Ray Bowen.
4. Appointment book of Dr. Ray Bowen and/or staff appointments with representatives of South Texas School of Law.

You state that you will release the salary information to the requestor. However, you claim that the remaining information is excepted from required public disclosure by section 552.103 of the Government Code. You have submitted information you seek to withhold responsive to item 4. You explain, however, that the remaining information responsive to

item 4 and the requested information in items 1 and 2 is either requested in an overly broad manner or is too burdensome to retrieve. We have considered your arguments have reviewed the submitted documents.

Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the state is or may be a party. The university has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.--Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). The university must meet both prongs of this test for information to be excepted under section 552.103(a).

In this instance, you state that the university is currently involved in pending litigation, *South Tex. College of Law v. Texas Higher Educ. Coordinating Bd.*, No. 98-03828 (250th Dist. Ct., Travis County, Tex.). You have provided this office with a copy of the Plaintiff's Original Petition in that case. After reviewing the submitted material, we find that litigation is pending. However, it does not appear nor have you demonstrated that the requested information relates to the pending litigation. *Texas Legal Found.*, 958 S.W.2d at 483. Consequently, you may not withhold the requested information under section 552.103(a).

As to the scope of the request for information in items 1, 2, and 4, we note that numerous opinions of this office have addressed situations in which a governmental body has received either an "overbroad" written request for information or a written request for information that the governmental body is unable to identify. Open Records Decision No. 561 at 8-9 (1990) states:

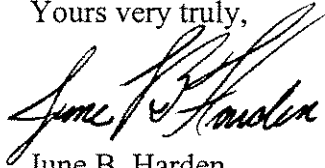
We have stated that a governmental body must make a good faith effort to relate a request to information held by it. Open Records Decision No. 87 (1975). It is nevertheless proper for a governmental body to require a requestor to identify the records sought. Open Records Decision Nos. 304 (1982); 23 (1974). For example, where governmental bodies have been presented with broad requests for information rather than specific records we have stated that the governmental body may advise the requestor of the types of information available so that he may properly narrow his request. Open Records Decision No. 31 (1974).

In response to the request at issue here, the university must make a good-faith effort to relate the request to information in the university's possession and must help the requestor to

clarify his request by advising him of the types of information available. We note that if a request for information is unclear, a governmental body may ask the requestor to clarify the request. Gov't Code § 552.222(b); *see also* Open Records Decision No. 561 at 8 (1990). You state that if possible you will ask the requestor to clarify his request to specify the records he seeks. Once the requestor has indicated which records are sought, you must release them unless they are otherwise confidential by law.¹

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/ch

Ref.: ID# 119422

Enclosures: Submitted documents

¹While we find that you must respond to the request for information, we point out that appropriate charges may be assessed for the requested records. Gov't Code §§ 552. 231, 552.261 - 552.263. If the estimated cost of providing the records exceeds \$100, a governmental body may require a deposit or bond from the requestor. Gov't Code § 552.263. We suggest that you contact the OpenRecords Administrator for the General Services Commission to resolve any cost issues. *See* Gov't Code §§ 552.261-.273.